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Legislative Bulletin......November 7, 2007

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H.R. 3688—United States-Peru Trade Promotion Agreement Implementation Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$5 million over ten years

Effect on Revenue: \$423 million decrease over ten years

Total Change in Mandatory Spending: \$443 million decrease over ten years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 2

Number of *Bills* **Without Committee Reports:** 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 3688—United States-Peru Trade Promotion Agreement Implementation Act (*Hoyer*, *D-MD*)

Order of Business: The bill is (reportedly) scheduled to be considered on Wednesday, November 7th, subject to a closed rule allowing no amendments. Under Trade Promotion Authority (Public Law 107-210), bills implementing trade agreements are not amendable (either in committee or on the House floor) in order to make the implementation acts easier to move through Congress and to make trade agreements themselves easier to negotiate because they offer foreign nations the assurance that what is negotiated won't be tweaked in the legislative process. Although Trade Promotion Authority (TPA) technically expired earlier this year, TPA still applies to this implementing legislation since the trade agreement itself was signed by both countries before such expiration.

<u>Summary by Title</u>: Negotiations for a free trade agreement (FTA) between the United States and Peru began in May 2004 and concluded on December 7, 2005. On April 12, 2006, then-U.S. Trade Representative Rob Portman and Peruvian Minister of Foreign Trade and Tourism Alfredo Ferrero Diez Canseco signed the Peru FTA. The Agreement was then ratified by the Peruvian Congress in June 2006.

H.R. 3688 would approve and implement the United States-Peru Free Trade Agreement, entered into on April 12, 2006; amended on June 24 and 25, 2007 by the United States and Peru, respectively; and submitted to Congress on September 27, 2007. Pending compliance by Peru with certain measures in the Agreement, the Agreement would take effect on or after January 1, 2008.

According to the United States Trade Representative (USTR), the Agreement would <u>immediately eliminate</u> 80% of the tariffs on consumer and industrial products. An additional 7% of the tariffs would become duty-free within five years, and <u>all</u> remaining tariffs would be eliminated within ten years. Two-thirds of current U.S. farm exports would <u>immediately</u> become duty free, including beef, cotton, wheat, soybeans, apples, pears, peaches, and several processed food products. Textiles and apparel at met the Agreement's rules of origin would become duty-free and quota-free immediately.

According to the U.S. International Trade Commission (ITC), the U.S. Gross Domestic Product (GDP) will likely rise by 0.02% (or \$2.1 billion) as a result of the Agreement, U.S. imports from Peru will likely increase by \$439 million, and U.S. exports to Peru will likely increase by \$1.1 billion, once the Agreement is fully implemented.

According to the ITC, key U.S. industrial sectors that are expected to benefit from the Peru FTA include information technology products, mining, agriculture and construction equipment, medical and scientific equipment, auto parts, paper products, rubber and plastic products, and chemicals. U.S. agricultural exports, such as cotton, wheat, soybeans, beef, apples, pears, peaches, cherries, and almonds, are also expected to benefit under the Agreement.

Key Peruvian sectors that are expected to benefit from the FTA include minerals and metals, mineral fuels and oils, organic chemicals, apparel, citrus fruits, and vegetables (such as asparagus).

According to the Ways & Means Committee, trade with Peru accounted for approximately 0.3% of total U.S. goods trade in 2006. Peru is the 43^{rd} largest U.S. export market and 42^{nd} largest source of U.S. imports. The U.S. is Peru's leading trading partner, sending 25.6% of its exports to the U.S. and receiving 20.1% of its imports from the U.S.

In 2006, **95%** of Peru's exports to the United States entered the United States duty-free (thus much of this Agreement is aimed at reducing Peruvian tariffs on American goods). Leading U.S. imports from Peru include refined copper cathodes, certain petroleum products, and cotton shirts and sweaters.

U.S. foreign direct investment (FDI) in Peru totaled \$5 billion in 2006, focused mainly on mining.

Highlights of H.R. 3688 are as follows:

Title I—Approval of, and General Provisions Relating to, the Agreement

- Makes U.S. law paramount to any provision in the Agreement that conflicts with U.S. law. States that the Agreement would not modify or limit any authority conferred under any U.S. law.
- A state law that conflicts with any provision in the Agreement could only be declared invalid in an action brought by the United States Government.
- > Prevents private legal actions against any provision of the Agreement.
- ➤ Provides for 15-day and 60-day layover procedures for certain actions made (i.e. regulations issued) by presidential proclamation under the Agreement.
- Authorizes "such sums" as may be necessary for the President to establish an office within the Department of Commerce to administer the Agreement.
- Terminates the applicability of this implementing legislation (other than this provision) on the date on which the Agreement might terminate.

Title II—Customs Provisions

- Allows the President to modify any tariffs or tariff-free treatment in the Agreement and to create additional tariffs as necessary (subject to certain limitations).
- > Terminates Peru's status as a beneficiary developing country for trade purposes.
- ➤ Directs the Secretary of the Treasury to assess a duty (as detailed in the bill) on certain agricultural goods imported into the United States in a calendar year if the Secretary determines that the total imported volume of the good in question exceeds 130% of the volume allowed in the Agreement.
- Defines in detail what an "originating good" is (originating from either the United States or from Peru) and what "originating materials," "nonoriginating materials," and "regional value content" are, as they relate to preferential tariff treatment under the Agreement. The bill also provides special calculation methods of such operative terms for automotive goods.
- ➤ Includes the costs of freight, insurance, packing, and other such transportation costs, as well as duties, taxes, customs fees, and spoilage in the calculation of value of an originating material.

- Allows for certain textiles or apparel goods to be considered an "originating good," as long as the total weight of all nonoriginating fibers in such a good does not exceed 10% of its total weight.
- Requires that a person's selected inventory method be used consistently without change throughout a fiscal year.
- Excludes packing materials and shipping containers when determining whether a material is an "originating material" or a good is an "originating good."
- ➤ Includes "indirect materials" (materials used in the production, testing, inspection, maintenance, and operation of the good—but not physically incorporated into the good) for the purposes of determining an "originating material."
- ➤ Originating goods would be disqualified as such if they undergo further production or any other operation (other than unloading, reloading, or essential preservation operations) outside Peru or the U.S.
- ➤ Goods put up as sets would <u>not</u> be considered "originating goods" unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10% of the value of the textile/apparel set or 15% of the non-textile/non-apparel set.
- ➤ Defines numerous operative terms, including and especially "good wholly obtained or produced entirely in the territory of Peru, the United States, or both," for the purposes of the preferential tariff treatment under the Agreement.
- Authorizes the President to proclaim modifications to the Agreement (subject to layover and other requirements). Specifically allows the President to add by proclamation fabrics or yarns not available in commercial quantities in the United States to the list of such products receiving preferential tariff treatment under the Agreement in unrestricted quantities.
- Creates a process by which a person could request the <u>addition</u> of fabrics, yarns, or fibers not available in commercial quantities in the United States or Peru to the list of such products receiving preferential tariff treatment under the Agreement in restricted or unrestricted quantities.
- > Creates a process by which a person could request the <u>removal</u> of fabrics, yarns, or fibers from the list of such products receiving preferential tariff treatment under the Agreement in restricted or unrestricted quantities.
- > Exempts products covered by this trade agreement from customs user fees.

- ➤ Shields an importer from penalties for making an incorrect claim of a qualifying originating good if he "promptly and voluntarily" makes a corrected declaration and then pays any duties owed. Exporters would be similarly shielded if they voluntarily provide written notice of any incorrect informant to every person to whom the original certification of a qualifying originating good was made.
- Allows the Homeland Security Department (Customs Service) to suspend preferential tariff treatment for an importer, exporter, or producer if such person is consistently found to be making false or misleading representations of their goods.
- > Provides authority for the Customs Service to "reliquidate" an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation, if the importer so requests, within one year after the date of importation.
- Authorizes the President to take certain actions while a verification of the originating status of a <u>textile or apparel good</u> is taking place. Such actions include suspending preferential tariff treatment to the textile or apparel good for which a claim of origin has been made or, in a case where the request for verification was based on a reasonable suspicion of unlawful activity related to such goods, for textile or apparel goods exported or produced by the person subject to a verification. Other available actions include the detention of applicable goods or the denial of entry into the U.S. of such goods.

Title III—Relief from Imports

- Authorizes the filing (with the U.S. International Trade Commission) by an entity, including a trade association, firm, certified or recognized union, or group of representative workers, of a petition requesting adjustment to the obligations of the United States under the Agreement (and asking for provisional relief). The Commission would then have to investigate whether "a substantial cause of serious injury or threat thereof to [a] domestic industry" is occurring as a result of the U.S.-Peru Free Trade Agreement (subject to certain exceptions).
- ➤ If the Commission finds injury or threat of injury, it would then have to recommend the amount of import relief necessary to correct or prevent harm. Further, the Commission would have to facilitate the efforts of the domestic industry to make a "positive adjustment to import competition."
- ➤ The President would not *have* to provide the suggested import relief, if doing so would have greater economic and social costs than benefits.
- Import relief could entail increasing duties or suspending their reductions and would have to occur progressively in intervals if the relief is to last more than one year.
- > Import relief could not last more than two years, subject to up-to-two-year extension by presidential determination.

- No import relief could be provided for a good that has been given duty-free treatment under the Agreement, and no import relief could be provided ten years after the Agreement enters into force (subject to exception).
- ➤ Prohibits the President from releasing information that is submitted in an import relief proceeding and that the President considers to be confidential business information, unless the party submitting the confidential business information had notice at the time of submission that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits such confidential business information to the President, the party would have to submit a non-confidential version of the information in which the confidential business information is summarized or, if necessary, deleted.
- Enacts similar provisions as above for import relief specifically for the <u>textile and apparel</u> industries. Total allowed aggregate import relief for textiles would be three years (two years plus an-up-to-one-year extension), instead of four years as above.

Title IV—Procurement

Makes Peruvian products and services eligible for federal government procurement.

Title V—Trade in Timber Products of Peru

- ➤ Directs the President to establish an interagency committee responsible for overseeing the implementation of the Agreement's Annex on Forest Sector Governance.
- Authorizes the committee to request the Government of Peru to conduct
 - --an audit to determine whether a particular producer or exporter in Peru is complying with all applicable Peruvian laws, regulations, and measures governing the harvest of, and trade in, timber products; or
 - --a verification with respect to a particular shipment of timber products from Peru to the United States, to determine whether the exporter or producer of the products has complied with the applicable Peruvian laws, regulations, and measures governing the harvest of, and trade in, timber products. (The committee could direct U.S. Customs and Border Protection to detain the shipment that is the subject of the verification (while a verification is pending) or to deny the shipment (if Peru will not verify).
- ➤ Directs the committee, upon receipt of the results of a verification from the Government of Peru (or upon the denial there from), to determine whether it is appropriate to take any action with respect to the shipment in question or the products of the relevant producer or exporter.
- Provides for confidential treatment of documents or information received in the course of a timber audit or verification above.

Title VI—Offsets

- Increases the estimated tax payments that certain corporations must remit to the federal government. Under current law, corporations with assets of at least \$1 billion must make estimated tax payments for the third quarter of 2012 that are 115% of the estimated payment otherwise due. The payment due for the fourth quarter of 2012 is reduced accordingly so that the corporations pay no net increase in estimated payments in 2012. The bill would increase this 115% figure to 115.75%. NOTE: This provision is merely a revenue timing shift, a budget gimmick used to comply with the House's PAYGO rules.
- Extends the authority to collect customs user fees from October 7, 2014 to December 13, 2014. (This provision scores as a credit against mandatory spending because the collected fees can be spent without further legislation action.)

<u>Supporting Documents</u>: To read a brief summary of the U.S.-Peru Free Trade Agreement itself, please visit this webpage:

http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file585_13067.pdf.

To read a more detailed summary of the Agreement itself, please visit this webpage: http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file672_13066.p http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2007/asset_upload_file672_13066.p

To read the actual text of the Agreement, please visit this webpage: http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html.

For other supporting documents, including state-by-state and sector-by-sector benefits of the Agreement, please visit these webpages:

http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Section_Index.html; and http://waysandmeans.house.gov/MoreInfo.asp?section=33.

Additional Background: With a population of 28 million people, Peru is the fifth most populous country in Latin America, after Brazil, Mexico, Colombia, and Argentina. According to the Ways & Means Committee, Peru's GDP in 2006 was \$77 billion, or about 0.6% of U.S. GDP (\$13.2 trillion in 2006).

According to the Peruvian Embassy, between 2001 and 2006, Peru's Gross Domestic Product (GDP) grew by 57%, and economic growth has been sustained for the past 76 consecutive months. Over the last three years, Peru's total trade has grown over 30% per year.

Peru is a long standing ally of the United States in an important region of the world. With the rise of dictator Hugo Chavez in nearby Venezuela, Peru's continuing path to democracy (since 1980) and its desire to strengthen ties with the U.S. is vital. According to a recent poll, Peruvians consider the U.S. as one of their country's closest allies and the top country with which to improve its economic relationship.

Key Issues:

- Labor. The Agreement requires both countries to adopt, maintain, and enforce basic international labor standards, including prohibitions on the worst forms of child labor, as stated in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work. Government procurement contracts could be conditioned on adherence to certain minimum labor standards. Neither country could waive or derogate from the laws that implement this obligation in a manner affecting bilateral trade or investment. These labor obligations are subject to the same dispute settlement procedures and enforcement mechanisms as are commercial obligations. Also the Agreement establishes a cooperative mechanism for the governments to develop cooperative activities aimed at advancing labor rights. And perhaps most importantly for conservatives, the Agreement would not harm right-to-work laws in the United States. (NOTE: Leading labor organizations and labor-oriented Democrats have praised the Peru FTA for its labor standards.)
- Environment. The Agreement requires both countries to implement and enforce certain common multilateral environmental agreements and to require Peru to take action to combat illegal logging in the Amazon, as well as the illegal collection of endangered species for export. All environment-related obligations in the Agreement are subject to the same dispute settlement procedures and enforcement mechanisms as are commercial obligations. (NOTE: Leading environmental organizations and environment-oriented Democrats have praised the Peru FTA for its environment provisions.)
- ➤ <u>Intellectual Property</u>. Under the Agreement, Peru will adopt higher and extended standards for the protection of intellectual property (IP) rights such as copyrights, patents, trademarks and trade secrets. The Agreement also provides enhanced means for enforcing those rights.

According to the USTR, the Agreement "provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent, both with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text, and video; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting of criminalizing end-user piracy."

However, not all players in the intellectual property arena are completely satisfied with the Agreement. For example, the Pharmaceutical Research and Manufacturers of America (PhRMA) is remaining neutral on the Agreement, claiming that the Agreement does not do enough (or as much as past Bush Administration agreements) to slow the introduction of generic drugs in to the Peruvian marketplace. One lobbyist for a pharmaceutical company wrote that, "[the] agreement seems to lay the groundwork for countries to undermine U.S. IP protections in the pharmaceutical sector – which will hurt

our competitiveness and result in fewer dollars flowing into research and development of new, life-saving technologies and products."

- ➤ <u>Ports</u>. The Agreement reaffirms that the United States can prevent foreign companies from operating U.S. ports.
- ➤ <u>Investors</u>. The Agreement gives U.S. investors in Peru the same protections as Peruvian investors in Peru. Similarly, the Agreement gives Peruvian investors in the U.S. the same protections as U.S. investors in the U.S. Peru has agreed to eliminate measures that require U.S. firms to hire national rather than U.S. professionals and measures requiring the purchase of local goods. Peru also agreed that both mutual funds and pension funds in Peru will be allowed to use portfolio managers in the U.S.
- ➤ <u>Telecom</u>. The Agreement prevents local telecom firms from having preferential access to telecom networks. U.S. phone companies obtain the right to interconnect with Peruvian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates.

In Latin America, the United States recently implemented a bilateral FTA with Chile, and the North American Free Trade Agreement and the Central American Free Trade Agreement remain in force. FTAs with Panama and Colombia are pending. Based on statements from House leadership, no legislation implementing the Panama or Colombia FTAs is expected to be brought to the House floor in 2007. For more information on these and other trade agreements, please visit this website: http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html.

<u>Committee Action</u>: On September 27, 2007, H.R. 3688 was referred to the Ways & Means Committee, which, on October 31, 2007, marked up and ordered the bill reported to the full House by a unanimous vote of 39-0.

<u>Administration Position</u>: The Administration, since it negotiated the US-Peru FTA, is strongly supportive of it.

<u>Cost to Taxpayers</u>: CBO estimates that H.R. 3668 would reduce revenues by \$20 million in FY2008, increase revenues by \$292 million over the FY2008-FY2012 period, and reduce revenues by \$423 million over the FY2008-FY2017 period. (*NOTE: the revenue increases are solely due to the corporate estimated tax payments gimmick described above.*)

CBO also estimates that the legislation would increase mandatory spending by \$4 million in FY2008, increase mandatory spending by \$27 million over the FY2008-FY2012 period, and reduce mandatory spending by \$443 million over the FY2008-FY2017 period (because of customers user fees, which score as a credit against mandatory spending).

Lastly, CBO notes that the bill would authorize appropriations of less than \$500,000 per year.

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: No, the legislation would implement an FTA that reduces government involvement in, and taxation of, trade between the United States and Peru.

<u>Mandates?</u>: Yes, CBO writes that H.R. 3688 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by extending the customs user fees and by enforcing new record-keeping requirements on exporters of goods to Peru. CBO notes that the aggregate costs of those mandates would "greatly exceed" the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation) in 2015.

<u>Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?</u>: The Ways & Means Committee, in House Report 110-421, asserts that, "Pursuant to clause 9 of Rule XXI of the Rules of the House of Representatives, the Ways & Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule."

<u>Constitutional Authority</u>: The Ways & Means Committee, in House Report 110-421, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States).

<u>Outside Organizations</u>: The following organizations are <u>supporting</u> the Peru FTA:

- ➤ Business Roundtable
- > Financial Services Roundtable
- Latin America Trade Coalition (including 711 individual companies and associations, large and small, most of which can be found here)
- ➤ National Association of Manufacturers
- ➤ U.S. Chamber of Commerce

PhRMA is remaining neutral on the Agreement, and the United Auto Workers circulated a letter praising the Agreement, though not explicitly endorsing it.

The Heritage Foundation has released reports supportive of increased and freer trade with Peru.

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